

JAN 28 2005

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

---

<b>Applicant:</b>	Matthew G. Fishler et al.		
<b>Serial No.:</b>	09/976,603	<b>Examiner:</b>	K. Schaetzle
<b>Filed:</b>	10/09/2001	<b>Art Unit:</b>	3762
<b>Docket No.:</b>	98P1008US02		
<b>For:</b>	SYSTEM AND METHOD OF GENERATING AN OPTIMAL THREE-STEP DEFIBRILLATION WAVEFORM FOR USE IN AN IMPLANTABLE CARDIOVERTER/DEFIBRILLATOR (ICD)		

---

**DECLARATION OF MARK W. KROLL TO**  
**TRAVERSE REJECTION (37 CFR 1.132)**

I hereby certify that this correspondence is being facsimile  
transmitted to the United States Patent and Trademark Office  
on:

Mail Stop Amendments  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

January 28, 2005

  
Estella Pineiro

Date

Sir:

I, **Mark W. Kroll**, declare that:

1. I am a coinventor of the above-identified patent application (the '603 application).
2. I have been an employee of Pacesetter, Inc., the assignee of the above '603 application, for approximately 10 years.
3. I have reviewed the Final Office Action issuing in the '603 application on January 24, 2005 and U.S. Patent No. 5,913,877 ('877) to Kroll et al.
4. The primary reference in the Final Office Action is the '877 patent and whose name inventors are Mark W. Kroll, James E. Brewer, and Brad D. Pedersen.

5. In the Final Office Action, the Examiner states that Figure 5 of the '877 patent illustrates a biphasic waveform having a first phase with at least three distinct voltage peaks.

6. The '877 patent is a continuation of application Serial No. 08/613,854 ('854).

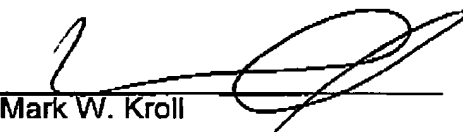
7. Before the filing date of the '854 application, I, along with James E. Brewer and Brad D. Pedersen, invented the subject matter of Figure 5 of the '854 application, that is, I am a coinventor of the invention(s) shown in Figure 5.

8. Thus, the subject matter in the '877 patent referenced by the Examiner in the Final Office Action is not by "another", and the '877 patent is an improper reference rejecting the claims in the subject '603 application.

I further declare that all statements made herein are of my knowledge, are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statement and the like so made may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

28 Jan 2005  
Date

  
Mark W. Kroll